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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 193

JAMES WASHINGTON,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS AND BRIEF IN SUPPORT THEREOF

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Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review a judgment and order of the Supreme Court of the State of Arkansas affirming a verdict and sentence of the Jefferson Circuit Court of said State.

A

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. Code, 344 b). The judgment sought to be reviewed was entered by the

Supreme Court of the State of Arkansas, the court of last resort in said State, on November 24, 1947 (R. 54), and Petitioner's Petition for a Rehearing was denied on May 3, 1948 (R. 63). The judgment of the Supreme Court of Arkansas is not reported officially. It appears in the record at pp. 54-62, 63.

B

Summary Statement of the Matter Involved

1. *Salient Facts:*

The Petitioner, James Washington, a Negro, was tried upon an information filed by the Prosecuting Attorney for Jefferson County (R. 2) and convicted by a jury of involuntary manslaughter for the death of Margaret Hill, a white woman, in an automobile accident (R. 53). He was sentenced to serve three years in prison (R. 53). The Petitioner offered no testimony on the facts of the accident and did not take the stand in his own behalf.

2. *Theory of the Trial:*

Since the Petitioner presented no testimony on the merits of the case and did not take the stand in his own behalf, there can be no dispute as to the facts.

But Petitioner did move to quash the information filed against him (R. 5, 6) on the ground that an information denied him the due process of law guaranteed him under the 14th Amendment to the Constitution of the United States, to Quash the Panel of Petit Jurors (R. 6-9) and to Quash the Supplemental Panel drawn from the box (R. 49) on the grounds that all Negoes were excluded therefrom (and had been so excluded systematically for more than thirty years) solely on account of their race and color, thus denying to Petitioner the due process and equal protection of the laws guaranteed him by the Constitution and

laws of the State of Arkansas and 14th Amendment to the Constitution of the United States; thereby raising substantial questions of federal law. All three motions were promptly denied and this denial was affirmed by the Supreme Court of the State of Arkansas (R. 55, 56).

C

Questions Presented

I

Whether the State of Arkansas may, under its Constitution and laws, authorize and use an *information* as a substitute for an Indictment by a Grand Jury, thereby depriving Petitioner of the due process of law guaranteed him by the 14th Amendment to the Constitution of the United States.

II

Whether the failure for a period of more than thirty years, in a county where the Negro population is approximately 55% of the total, to call any Negro for regular jury service, is proof that Negroes have been systematically excluded by the Courts from jury service solely on account of their race and color, in violation of the due process and equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States.

III

Whether the selection of a very limited number of Negroes as alternate jurors on the panel in question was an attempt to evade the laws and Constitution of the United States and to deny Petitioner the due process and equal protection of the law guaranteed him by the 14th Amendment to the Constitution of the United States.

D

Reasons Relied Upon for the Allowance of the Writ

1. The authority granted by Amendment No. 21 to the Constitution of Arkansas to the Prosecuting Attorney to proceed in the prosecution of offenses by either an information filed by him or by indictment of a grand jury is violative of the Constitution and laws of the United States.

(a) —"nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Fourteenth Amendment, Constitution of the United States.

(b) The provision of the Fifth Amendment to the Constitution to the effect that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury" is applicable to the State within the meaning of the Fourteenth Amendment (*supra*).

See the dissenting opinion in *Adamson* v. *People of California*, 332 U. S. 19, 67 S. Ct. 1672 (1947).

(c) Amendment 21 to the Constitution of Arkansas reads:

"That all offenses heretofore required to be prosecuted by indictment may be prosecuted either by indictment by a grand jury or information filed by the prosecuting attorney."

The power of election vested in the prosecuting attorney is an improper delegation to that officer of legislative and judicial authority, vesting in an individual the power and opportunity to differentiate and discriminate between citizens arbitrarily.

See *Hurtado* v. *California*, 110 U. S. 516.

2. Exclusion of the members of the Negro race from jury service merely because of their race and color is violative of the 14th Amendment to the Constitution of the United States.

(a) Such exclusion is state action, whether performed or enforced by the legislative, judicial or executive branch of the government.

Ex parte Virginia, 100 U. S. 339;
Virginia v. *Rives,* 100 U. S. 313;
Strauder v. *West Virginia,* 100 U. S. 303.

(b) Where the evidence shows that no Negroes have been called for jury service over a long period of years, despite the fact that there is a large number of Negroes qualified for such service in the county, it will be presumed that all Negroes are excluded from such service solely on account of their race and color.

Neal v. *Delaware,* 103 U. S. 370;
Carter v. *Texas,* 177 U. S. 442;
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Hale v. *Kentucky,* 303 U. S. 613;
Pierre v. *Louisiana,* 306 U. S. 354;
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Smith v. *Texas,* 311 U. S. 128.

3. Adoption of a fixed and limited quota of Negroes to be placed on the jury panel, when that quota is well within the number of peremptory challenges allowed the state, when followed by the exercise of these challenges against all Negroes, is evidence presumptive of evasion of the laws and Constitution of the United States.

See *Akins* v. *Texas,* 325 U. S. 398.

In support of the foregoing grounds of application, the Petitioner submits herewith the accompanying Brief setting

forth in detail the pertinent arguments applicable to such Petition.

Petitioner, through his counsel in this Court, expressly states that this application is filed in good faith and not for purposes of delay.

Conclusion

WHEREFORE, it is respectfully submitted that this Petition for a Writ of Certiorari to review the judgment of the Supreme Court of the State of Arkansas be granted.

LEON A. RANSOM,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 193

JAMES WASHINGTON,

Petitioner,

vs.

THE STATE OF ARKANSAS,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

Opinion of the Court Below

The opinion of the Supreme Court of the State of Arkansas is not officially reported. It appears in the Record at pages 55-62.

Jurisdiction

The jurisdiction of the Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. Code 344 (b)).

The judgment sought to be reviewed was entered by the Supreme Court of the State of Arkansas on April 5, 1948

(R. 54), and application for rehearing was denied on May 3, 1948 (R. 63).

Statement of the Case

The statement of the case and the nature of the application for the writ are set forth in the accompanying petition for certiorari.

Statement of Facts

At the trial in the Jefferson Circuit Court the only facts on which this application for a writ of certiorari is based, were brought out in the motions to Quash the Information (R. 5), to Quash the Panel of Petit Jurors (R. 6), and to Quash the Supplemental Panel (R. 49). Briefly summarized, the basic facts in the case are as follows:

Petitioner, James Washington, is a citizen of the United States and is a citizen and resident of the State of Arkansas; he is a Negro and resident of Jefferson County, Arkansas. On August 27, 1947 the Prosecuting Attorney for the Eleventh Judicial Circuit of the State of Arkansas of which Jefferson County is a part, filed an Information accusing the Petitioner of the crime of manslaughter, in that on the 23rd day of August, 1947, said Petitioner did "willfully, unlawfully, and feloniously kill and murder Margaret Hill," (a white woman), "by recklessly, carelessly, wantonly, and without due caution and circumspection, drive an automobile over and against the head and body of said Margaret Hill, from which wounds—the said Margaret Hill did then and there die, contrary to the statute" etc. (R. 2, 3). A bench warrant for Petitioner's arrest was issued August 28, 1947 (R. 4) served the same day (R. 4), and bond fixed in the sum of $1500 and made (?) on August 28, 1947 (R. 5).

At the trial on the Information, held in the Circuit Court for Jefferson County, beginning October 10, 1947, and end-

ing October 11, 1947 (R. 5-13), Petitioner offered no testimony as to the facts and did not take the stand in his own behalf. Petitioner does not rely here upon any claim of error as to the facts of the alleged offense. However, Petitioner asserted, at the trial (R. 5, 6) that the Information drawn against him was a violation of his constitutional and legal rights under the Constitutions and laws of the United States and the State of Arkansas, in that he was entitled to a trial upon a presentment or indictment of a Grand Jury, instead of an arbitrary election between such indictment or presentment and an information by the Prosecuting Attorney. This assertion was timely made, *in limine*, by Motion to Quash the Information, and was summarily denied, without evidence being taken thereon, to which ruling Petitioner duly excepted (R. 9, 21).

Immediately thereafter Petitioner moved to Quash the Panel of the Petit Jury called to try the cause. This motion was timely made and *in limine* (R. 6-9). Testimony and argument were had thereon (R. 14-21) and the Motion was denied, to which ruling the Petitioner duly excepted (R. 21). On this Motion to Quash the Panel of Petit Jurors, Petitioner showed:

(a) That the present clerk of the Jefferson Circuit Court has held office for five years; that his official duties include the submission of a list of names to the Sheriff of Jefferson County for jury service (R. 14); that, prior to the term in question, he had no knowledge of the name of any Negro being submitted for such jury service (R. 15); that on the list for the term in question (October Term, 1947 (R. 1, 2)) the names of three Negroes were listed on the petit jury list as "*alternate petit jurors*" (R. 15). (Italics supplied). The three thus listed, V. T. Price, R .D. Doggett, and Prince Swaizer, Sr. (R. 15), were all peremptorily dismissed by the State (R. 29, 31, 33).

In more than thirty years, according to the clerk's memory, these were the first Negroes ever summoned for jury duty (R. 15). These three, named as alternates only, were selected by the Jury Commission on the first day of the term, after this Information was filed (R. 16).

The Sheriff of the County testified that he had served in that office for more than 20 years (R. 18); that he had never summoned any Negroes as jurors prior to this term of court (R. 18): that there were 11,400 qualified electors in the county (R. 34), of which approximately 2900 were Negroes (R. 18), and, significantly, that this computation had been made after a similar motion in a previous case, made by the Counsel for Petitioner below (R. 18). The same witness testified that out of the original panel of 36, on which the three Negroes above named were listed as alternates, 13 were excused for various reasons and 9 were added as bystanders (R. 20). None of these nine, summoned by the Sheriff at the order of the trial judge, were Negroes (R. 21). The record shows, (R. 16, 17), by Exhibit A, (properly introduced in evidence (R. 21)), a certificate from the Bureau of the Census, Department of Commerce of the United States, that the white population of Jefferson County in 1940, (the last available census figure) was 29,079, and the Negro population was 35,980 (R. 21).

The term panel, consisting of regular and alternate jurors, having been exhausted by excuses and challenges, the court ordered its clerk to add additional names from bystanders (R. 79) as special jurors. Petitioner, through his counsel below, duly and seasonably moved to quash this supplemental panel from the box when the regular panel was exhausted, and this motion was summarily denied, apparently without argument thereon (R. 49).

Thereafter a jury was finally selected, and upon the State's case, submitted and the verdict and judgment ren-

dered, from which this application for a writ of certiorari is sued.

ARGUMENT

I

The Use of an Information in Lieu of an Indictment or Presentment Is a Denial of Constitutional Rights to Due Process and Equal Protection of the Laws.

The Petitioner is fully aware that the problem presented in Argument I is fraught with the dangers of the doctrine of *stare decisis*. Aware likewise, however, that this Court has not hesitated, on numerous occasions in its past history, to reverse itself and abandon doctrines which either economy, the changing social order, or a more astute and complete research into our political past has deemed expedient, it is now respectfully submitted that the Court should re-examine the premise laid down in *Barron* v. *Baltimore*, 7 Pet. 243, and subsequently relied upon, among others, in *Twining* v. *New Jersey*, 211 U. S. 78, and most recently in *Adamson* v. *People of California*, 332 U. S. 19.

A.

The Fifth Amendment to the Constitution of the United States provides among other things, that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." Petitioner was charged with the offense of manslaughter, an infamous crime (R. 2, 3), of which involuntary manslaughter is a component part (R. 55, n.).

The first problem presented is that of whether the provision of Amendment 21 to the Constitution of the State of Arkansas, which permits prosecution for an infamous crime on either an information or indictment is violative of the provisions of the 14th Amendment to the Constitution of the

United States in that it is state action which deprives a citizen of the United States of the due process of law guaranteed therein. This can be resolved only by a determination of the question as to whether or not the fundamental rights, privileges or immunities of a citizen of the United States are set forth in the first ten amendments to the Constitution of the United States, and are therefore within the protection of the first section of the 14th Amendment thereto. Or, to put it more succinctly, is the Bill of Rights limited to federal intervention only, or did the United States, in the adoption of the 14th Amendment, intend to extend the guaranties against invasion of the "natural rights of man" to state action as well?

Petitioner concedes, but without agreeing, that this Court has said, in *The Slaughterhouse Cases*, 16 Wall. 36, that the privileges and immunities of a citizen of the United States could not be enumerated. He further concedes, but without agreeing, that this Court, in *Palko* v. *Connecticut*, 302 U. S. 319, and in *Twining* v. *New Jersey, supra*, as well as in the majority opinion in *Adamson* v. *The People of California, supra* that the invasions there complained of were not within the classification of the rights protected by the 14th Amendment; and he still further concedes, but does not agree, that *Hurtado* v. *California*, 110 U. S. 516, has held that an amendment to the State Constitution similar to the one at bar, is not violative of the "natural rights" of a citizen of the United States. But Petitioner urges upon this Court a reconsideration of these decisions in view of the illuminative arguments of the several dissents in *Adamson* v. *The People of California, supra*. In particular the Court's attention is invited to the Appendix filed to the dissenting opinion of Mr. Justice Black therein. The research into the legislative debates, which discloses the underlying purposes of the framers of the 14th Amendment, seems persuasive of an intent to guarantee all the citizens of the United States

against the invasions of those rights which the tyrannies of the colonial governors had inflicted upon their subjects. No useful purpose can be served by repetition here of the arguments so ably set forth in the dissent referred to in *Adamson* v. *The People of California, supra.* Let it suffice to say, that despite scattered decisions to the effect that there is an undetermined limit as to how far the States may go in invading the rights of a citizen of the United States, the Court, by its process of exclusion, as distinguished from inclusion, has made it possible for a State to experiment even to the point where it may abolish the right to confrontation of witnesses, to a speedy trial, to compulsory process for the production of the accused's own witnesses, and even to permit "Star Chamber" proceedings. It is not inconceivable that it could be argued successfully that a state, by constitutional amendment, and by extension of the theories heretofore supported by this Court, could eliminate even the right to *any* type of information other than the accusation of a fellow citizen—thus relegating us to the era of the Inquisition or advancing us to the doctrines of the Gestapo.

B.

Even if it be considered that the doctrine of *stare decisis* compels the conclusion that the procedure in question does not violate the concept of "due process", it is contended that it is violative of the "equal protection" clause of the Fourteenth Amendment. This Court has so often held that all citizens of the United States must have equal treatment in the courts of the state that it would be an imposition to make any argument or cite authorities on the point. It remains only to inquire whether the procedure authorized and used in the instant case admits of differentiation so far as accusations of criminal offenses are concerned.

Amendment 21 to the Constitution of Arkansas authorizes

the choice of alternatives as to the method to be used in bringing an accused to the bar. Assuming that the position of the court below, that the state may, by constitutional amendment, change from the common law method of accusation, is correct, it can be so only if it applies equally to *all* offenders. Either *all* are entitled to a presentment or indictment by a grand jury of the vicinage or *none* is. It follows that, granting the validity of the argument relied upon below, to insure equality of treatment, *all* must be charged by the simpler process of the information.

It is an obvious perversion of logic to say that there is equal protection of the laws if the prosecuting official may, at his caprice, elect to have the citizens of the county determine, in one case, whether a fellow citizen shall be put to trial, and in another, for fear that the grand jury might not indict, or from personal motives of malice, spite, politics, personal preferment, or even greed or bribery, file the information himself. The fact that the danger of abuse is remote is no answer to the fact that it does exist. The *possibility* of discriminatory treatment, not the *probability*, makes necessary the safeguards set up by the federal constitution.

II

Systematic Exclusion of All Negroes from Jury Service, on Account of Their Race and Color, for a Period of More Than Thirty Years, Is Violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

A.

No extended argument is needed to support the proposition advanced above. This Court, over a long period of years, repeatedly asserted it and reversed and remanded sentences imposed by state courts which ignored that doctrine.

There is no longer room for doubt that the determination of citizens eligible for jury service, the drawing from the box, and the making up of the jury list by duly appointed or elected jury commissioners, or the selection of talesmen from the bystanders by the court or its officers, is state action within the Fourteenth Amendment's meaning.

Ex Parte Virginia, 100 U. S. 339;
Virginia v. *Rives,* 100 U. S. 313;
Strauder v. *West Virginia,* 100 U. S. 303;
Neal v. *Delaware,* 103 U. S. 370;
Norris v. *Alabama,* 294 U. S. 587.

And it is equally well settled that when such state action goes to the extent of excluding all Negroes from the process of jury selection solely because of their race and color, then the accused has been denied the protection of the guarantee of the Constitution.

Carter v. *Texas,* 177 U. S. 442;
Norris v. *Alabama,* 294 U. S. 587;
Hollins v. *Oklahoma,* 295 U. S. 394;
Hale v. *Kentucky,* 303 U. S. 613.

B.

In view of this state of the law it remains only to inquire whether the fact that over a long period of years no Negro has ever been called or sat as a juror in the county is proof of systematic exclusion of all Negroes solely on account of race and color. The court decided this question affirmatively in *Hale* v. *Kentucky, supra:*

> "No evidence to the contrary was introduced by the State. We are of the opinion that the affidavits, which by the stipulation of the State were to be taken as proof, and were uncontroverted, sufficed to show a systematic and arbitrary exclusion of Negroes from the jury list solely because of their race or color, constitut-

ing a denial of the equal protection of laws guaranteed to Petitioner by the 14th Amendment."

Here the circumstances are almost identical with those in the case last cited. The only difference is in the length of time over which the memory of the witness extends. There it was approximately fifty years—here thirty. But the same presumption arises—the practice is of such long standing, such continuity, that the conclusion is inevitable. Only a systematic plan of exclusion, conceived and executed by the responsible state officials can account for the fact that in over thirty years, in a county where the Negro population is 55% of the total, no Negro has ever been summoned as a juror. The law of probabilities in mathematics cannot have been suspended that long.

Nor is the fact that there are only 11,400 qualified electors in the county, from whom the jurors are selected, and that of those only 3,000, or about one-fourth, are Negroes, of any help to the respondent. As this Court said in its most recent opinion on this subject, *Patton* v. *Mississippi*, 332 U. S. 463 (Dec. 8, 1947):

> "Where, in a county the adult population of which is more than 35% Negro, no Negro has served on a grand or petit criminal court jury for 30 years, the inference of systematic exclusion is not repelled by showing that a relatively small number of Negroes meets a requirement, that a juror must be a qualified elector."

Petitioner submits that this is a conclusive answer to the problem at bar. It is significant that not even this information was brought out by Respondent. It came from the Petitioner. The State offered no proof or contradiction of the allegations in the motions and affidavits to quash the panels, and under the rule of *Hale* v. *Kentucky, supra,* the judgment should be reversed. See also:

Carter v. *Texas, supra;*
Hollins v. *Oklahoma, supra;*
Norris v. *Alabama, supra;*
Hill v. *Texas,* 316 U. S. 400;
Smith v. *Texas,* 311 U. S. 126.

III

The Adoption of an Arbitrary Quota of Negroes for a Particular Panel, With Consequent Immediate Peremptory Challenge of Them, Is Evidence of Collusion by State Officials to Evade the Laws and Constitution of the United States.

In the instant case Respondent seeks to evade the application of the rule announced in Argument II by a showing that on the panel challenged there were the names of three Negroes. (This is tacit admission of the former practice of exclusion.) It is significant that this jury list, with the addition of these names, was made up after the Information was filed (1, 2), and they were named as "alternate" jurors only.

But what is of greater moment is the fact that only three were called and that this is less than the number of peremptory challenges allowed the state by Arkansas law. Petitioner does not contend that he is entitled to have any particular number, nor indeed, any, of Negroes on the panel. But it is respectfully contended that when, for the first time in 30 years, Negro names do appear on the panel, and three appear at one time, and in a criminal prosecution of a Negro for the death of a white woman, all of whom are peremptorily challenged by the State without examination, there arises a presumption of only colorable compliance with the law, and the State is charged with the burden of showing that it acted in good faith.

It is submitted that the Respondent is tendering a plea of

"confession and avoidance" to a charge of violation of civil rights. It admits its guilt in the past and pleads for mercy because it now makes a token compliance with the law —a token not offered in good faith because it is obviously intended that no Negro shall be allowed to serve upon a petit jury in a criminal case. Petitioner contends that more than this is required of the Respondent. It is believed that this alleged *compliance* with the law is but a part of a preconceived design to circumvent the former decisions of this Court. If this deception be sustained, the pronouncements of the Court become a dead letter. All that is necessary to continue the pattern of exclusion is to put the names of one or two Negroes per term in the jury box. If, by chance, one or both are drawn, peremptory challenges will dispose of them. As was said by this Court in *Smith* v. *Texas,* 311 U. S. 128:

> ". . . What the Fourteenth Amendment prohibits is racial discrimination in the selection of grand juries. Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintances, discrimination can arise from commissioners who know no negroes as well as from commissioners who know but eliminate them. *If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand.*" (Italics supplied.)

The problem here presented was considered in *Hall* v. *U. S.* (No. 9584, U. S. Ct. of App. D. C., Apr. 5, 1948), and in a vigorous dissent, Mr. Justice Edgerton said:

> "The rule against excluding Negroes from the panel has no value if all who get on the panel may be sytematically kept off the jury. . . . Nineteen Negroes and no other persons were challenged peremptorily by the government. Whether this discrimination did or did not violate the Act of Congress, I think it violated

the plainly expressed policy of Congress, the plainly expressed policy of the Supreme Court, the prosecutor's obligation of fairness, and the due process clause of the Fifth Amendment."

Conclusion

We respectfully submit that the time has come for this Court to clarify the position of this Nation on the question of civil liberties. Two questions must be answered categorically. (1) Are the guaranties of civil liberty afforded to the citizens of the United States circumscribed by the boundaries of Federal action only, or are they equally protected against state interference? (2) Is mere "paper compliance" or colorable action to be accepted as a substitute for the reality of equality of treatment and due process? It becomes our duty to urge that our profession of the *law in the books* must now be translated into *law in action.*

Respectfully submitted,

LEON A. RANSOM,
Attorney for Petitioner.

W. HAROLD FLOWERS,
RUTH C. FLOWERS,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 191

JAMES WASHINGTON, *Petitioner*

v.

STATE OF ARKANSAS, *Respondent*

REPLY OF STATE OF ARKANSAS TO PETITION AND BRIEF OF PETITIONER FOR CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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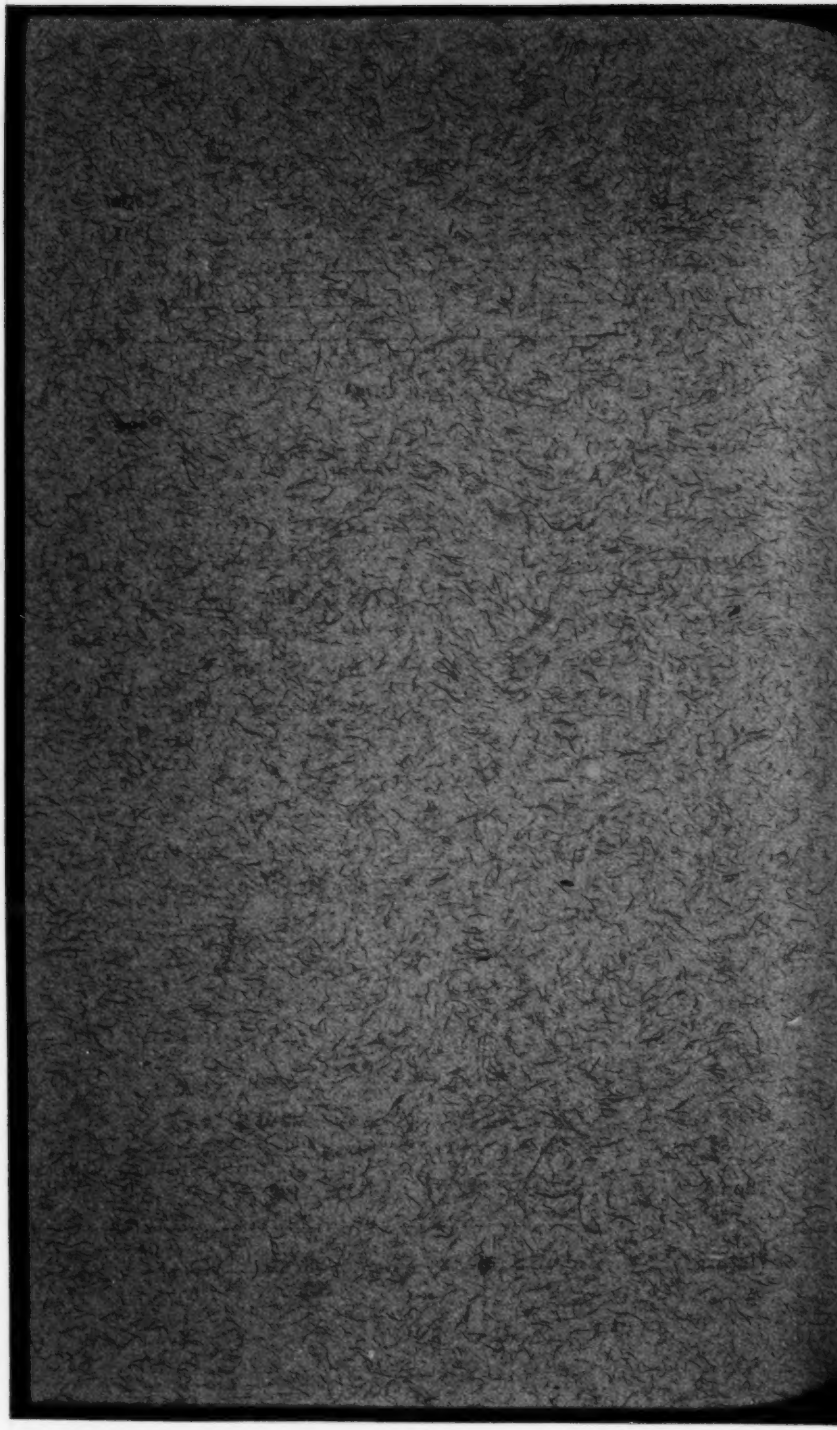

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v.

STATE OF ARKANSAS ..... *Respondent*

REPLY OF STATE OF ARKANSAS TO PETITION AND BRIEF OF PETITIONER FOR CERTIORARI TO THE SUPREME COURT OF ARKANSAS

STATEMENT

Petitioner, in his argument beginning at page 11 of his brief presents three reasons or grounds for his contention in this case. He gives them in his headings under divisions I, II and III. We shall notice these assigned and discussed numbered and set out grounds or reasons in the same order as used by him and set out above and use the headings as also used.

I

The Use of an Information in Lieu of an Indictment or Presentment Is a Denial of Constitutional Rights to Due Process and Equal Protection of the Laws

This contention of petitioner as stated above, is earnestly denied and disputed by Respondent. We say and contend this self-same matter or question has been many times adversely decided against the contention made by petitioner. There are many such cases. Some are:

Penton v. *State,* 194 Ark. 503, 109 S.W. 131;

Smith, et al v. *State,* 194 Ark. 1041, 110 S.W. 24;

Hurtado v. *California,* 110 U.S. 516, 28 Law Ed. 232, 4 S. Ct. 111;

Gaines v. *Washington,* 277 U.S. 81, 72 Law Ed. 793, 48 S. Ct. 468;

Bolln v. *Nebraska,* 176 U.S. 83, 44 Law Ed. 382, 20 S. Ct. 287.

Petitioner cites and relies upon the minority opinion in *Adamson* v. *California,* 332 U.S. 19, 91 Law Ed. (Adv. Op.) 1464, 67 S. Ct. 1672, written by Mr. Justice Black. This is not the controlling opinion in the Adamson case but the majority opinion therein controls. The majority opinion does not overrule the holdings of the other cases herein above given but sustains them.

II

Systematic Exclusion of all Negroes from Jury Service, on Account of Their Race and Color, for a Period of More Than Thirty Years, is Violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States

There could be no prejudice to the petitioner as to what had been done the past thirty years if his rights and interests were taken care of in his case. Suppose there had been a systematic exclusion for thirty years but there was no exclusion in the jury in his case. There then could be no prejudice or injury to him. There were three jurors of the negro race upon the panel of the petit jury called in his case. Their names were: V. T. Price, R. D. Daggett and Price Swaizer. They were examined as jurors to try petitioner. The number or order of their examination as jurors to try the case was 7, 10 and 12 (R.28, 30, 33 and 58). There were then negroes upon the panel from which this jury was selected and they were examined. No question as to what had been formerly practiced, if such a contention were true, could possibly affect the rights or interests of petitioner adversely.

III

The Adoption of an Arbitrary Quota of Negroes for a Particular Panel, with Consequent Immediate Peremptory Challenge of them, is Evidence of Collusion by State Officials to Evade the Laws and Constitution of the United States

In a discussion of this heading petitioner in his brief seems to admit there were three negroes upon the panel

challenged. This being true and as before stated and argued, herein above did not prejudice the petitioner. This matter was fully and completely treated and answered by good and sufficient citation of authorities in the opinion of the Arkansas Supreme Court in this case which was written by Mr. Justice Ed F. McFaddin. These authorities, which sustain the holding of the Arkansas Supreme Court, are:

Akins v. *Texas,* 325 U.S. 398, 89 Law Ed. 1692, 65 S. Ct. 1276;

Virginia v. *Rives,* 100 U.S. 313, 25 Law Ed. 667;

Thomas v. *Texas,* 212 U.S. 272, 53 Law Ed. 513, 29 S. Ct. 393;

Hill v. *Texas,* 316 U.S. 404, 86 Law Ed. 1562, 62 S. Ct. 1159;

Norris v. *Alabama,* 294 U.S. 587, 79 Law Ed. 1074, 55 S. Ct. 579;

Smith v. *Texas,* 311 U.S. 128, 85 Law Ed. 84, 61 S. Ct. 164;

State v. *Koritz,* 277 N.C. 552, 43 S.E. 77.

Certiorari by the United States Supreme Court was denied and the opinion is found in 332 U.S. 767, 92 Law Ed. 22, 76 S. Ct. 80, (Adv. Sheets).

CONCLUSION

We earnestly submit that there is no ground or reason for this Court to grant the relief sought by petitioner nor in any wise to disturb the holding of the Arkansas Supreme Court herein.

Respectfully submitted

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